

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: August 19, 2009
POSITION: Support
SPONSOR: California Department of Food and Agriculture

BILL NUMBER: AB 856
AUTHOR: A. Caballero

BILL SUMMARY: Fertilizing Material: Organic Input Material

This Administration-sponsored legislation would make various changes to the Food and Agricultural Code regulating fertilizing materials including, but not limited to: (1) adding organic input material, as defined, within the definition of fertilizing material, (2) establishing and increasing civil penalties for violations relating to fertilizing materials, (3) making it unlawful and a misdemeanor, punishable by specified fines, for any person to knowingly adulterate an organic input material, as provided, and (4) requiring the Secretary of Food and Agriculture (Secretary) to conduct a review, as specified, of the definition of organic input materials and to post a report on the California Department of Food and Agriculture's (CDFA) Internet Web site.

FISCAL SUMMARY

The CDFA advises that this bill would have no fiscal impact on its department because it is primarily a "penalty provisions bill." As such, the CDFA would not be required to register bulk organic input material, conduct additional site inspections, and perform additional enforcement activities. The CDFA indicates that the required review and report would not result in increased costs.

Any local government costs resulting from the mandate in this measure would not be state-reimbursable because the mandate only involves the definition of a crime or the penalty for conviction of a crime.

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the July 1, 2009 version include, but is not limited to, the following significant amendments which do not change our position:

- Removes several provisions relating to organic input material, including licensing, registration, fees, inspections, and the creation of the Organic Input Materials Account within the Department of Food and Agriculture Fund.
- Removes prior amendments changing the composition of the Fertilizer Inspection Advisory Board.
- Removes a prior amendment making it unlawful and a misdemeanor to adulterate, misbrand, or alter any fertilizing material, as provided.
- Makes it unlawful and a misdemeanor to knowingly adulterate an organic input material with ingredients that do not comply with the requirements of the National Organic Program standards, as provided.

COMMENTS

The Department of Finance supports this Administration-sponsored bill because it would expand the CDFA's authority to regulate fertilizing material to include organic input material, as defined, and would enhance the CDFA's enforcement capability through penalties. This bill would also help provide disincentive for committing fraud in the production of organic input material, thereby protecting organic farmers and consumers.

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Analyst/Principal (0222) R. Baker	Date	Program Budget Manager Todd Jerue	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

BILL ANALYSIS	Form DF-43 (Rev 03/95 Buff)
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COMMENTS (cont'd)

Existing law was created to promote effective and safe use of commercial fertilizers, assure consumers that fertilizers, minerals, soil amendments, auxiliary soil and plant substances are properly identified and to validate the quality and quantity represented by the manufacturer. Statute provides definitions, licensure requirements for manufactures with a fee of \$200, requires a registration fee of up to \$200 for each label, permits proof of label claims to be substantiated, and allows for cancellation of registration or refusal to register, as specified. An appointed industry advisory board (board) makes recommendations to the Secretary regarding all fees. All licensees pay an assessment to cover inspection, sampling and analysis and an additional assessment if permitted for research and education purposes. Additionally, there are penalties for violations of these provisions, for misbranding and adulteration of fertilizers.

Specifically, this bill would:

- Increase the penalty provisions to not more than \$1000 for the first violation and not less than \$1000 for each subsequent violation.
- Require that a civil penalty be levied of not more than \$5,000 for each violation. If the violation is negligible or unintentional, a notice of warning is permitted. For those levied civil penalties, a due process appeal hearing with the CDFA is provided.
- Create a civil penalty for the movement, distribution, or sale of fertilizing material quarantined by the CDFA and increase the misdemeanor fine up to \$5,000 for the first offense and at least \$10,000 for subsequent violations.
- Define "organic input material" as a bulk or packaged commercial fertilizer, agricultural mineral, auxiliary soil and plant substance specialty fertilizer, or soil amendment, excluding pesticides used on organic crops in compliance with the National Organic Program (NOP).
- Prohibit a person from distributing an organic input material containing ingredients that, in type or amount, do not comply with the requirements of the NOP, as provided.
- Make it unlawful and a misdemeanor for a person to knowingly adulterate an organic input material with ingredients that do not comply with the requirements of the NOP, as specified. Any violation would be punishable by a fine not to exceed \$15,000 for the first violation and at least \$15,000 for subsequent violations.
- Authorize the CDFA to receive reimbursement from any person who is found in violation of these provisions for any reasonable attorney's fees and other related costs, including, but not limited to, investigative costs, involved in enforcement of these provisions.
- Require the Secretary, by January 1, 2012 and in consultation with the board, to review the definition of organic input materials, as defined, and identify oversight and implementation issues that may arise or have arisen on account of that definition. The review shall include an examination of materials not currently regulated under this definition that may warrant oversight, as provided, and shall include recommendations for any necessary statutory changes. The review shall be posted in a report on the CDFA's Internet Web site.

BILL NUMBER

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		SO	(Fiscal Impact by Fiscal Year)						
Code/Department	LA	(Dollars in Thousands)							
Agency or Revenue	CO	PROP							Fund
Type	RV	98	FC	2009-2010	FC	2010-2011	FC	2011-2012	Code
8570/Food & Ag	SO	No		-----	No/Minor	Fiscal Impact	-----		0111
<u>Fund Code</u>	<u>Title</u>								
0111	Department of Agriculture Account, Ag Fd								